

ZONING RECLASSIFICATION APPLICATION

Harford County Board of Appeals

Bel Air, Maryland 21014

AUG 21 2007

Case No. 171

Date Filed 8/14/07

Hearing Date _____

Pre-Conf. _____

Receipt _____

Fee \$800.00

Shaded Area For Office Use Only

Note

1. It is required that the applicant have a pre-filing conference with the Department of Planning and Zoning to determine the necessary additional information that will be required.
2. The burden of proof in any rezoning case shall be upon the Petitioner.
3. Any application in a zoning case and any amendment thereto shall contain specific allegations setting forth the basis for granting of the request.
4. Petition must contain names and addresses of all persons having legal or equitable interest in the property, including shareholders owning more than five percent (5%) of the stock in a corporation having any interest in the property, except those corporations listed and traded on a recognized stock exchange.
5. Application will be reviewed for completeness within ten (10) working days of submittal. Applicant will be notified by mail of completeness of application.

Petitioner

Name Rt 152, LLC Phone Number _____

Address P.O. Box 7 Fallston, MD 21047-0007
Street Number Street State Zip Code

Property Owner Same as above Phone Number _____

Address _____
Street Number Street State Zip Code

Contract Purchaser N/A Phone Number _____

Address _____
Street Number Street State Zip Code

Attorney/Representative Kevin J. Mahoney, Esquire Phone Number 410-893-7500

Address 11 South Main Street Bel Air MD 21014
Street Number Street State Zip Code

Land Description

Address and Location of Property (with nearest intersecting road) Pleasantville Road near Route 152.

Subdivision _____ Lot Number _____ Acreage/Lot Size 10.53 Election District 04

Existing Zoning AG/B# Proposed Zoning RR Acreage to be Rezoned 10.53

Tax Map No. 47 Grid No. 2D Parcel 252 Deed Reference 5413/228

Critical Area Designation None Land Use Plan Designation Rural Residential

Present Use and ALL improvements: Vacant

Proposed Use (If for subdivision development, proposed number of lots, type of dwellings, and type of development.

Example: Conventional, Conventional with Open Space, Planned Residential Development) Five (5) lot rural residential sub-division.

Is the property designated a historic site, or does the property contain any designated or registered historic structures?

No If yes, describe: _____

Estimated Time Requested to Present Case: One hour.

Required Information To Be Attached

(Submit three (3) copies of each):

(a) The names and addresses of all persons, organizations, corporations, or groups owning land, any part of which lies within five hundred (500) feet of the property proposed to be reclassified as shown on the current assessment records of the State Department of Assessments and Taxation.

(b) A statement of the grounds for the application including:

(1) A statement as to whether there is an allegation of mistake as to the existing zoning, and if so, the nature of the mistake and facts relied upon to support this allegation.

(2) A statement as to whether there is an

allegation of substantial change in the character of the neighborhood, and if so, a precise description of such alleged substantial change.

(c) A statement as to whether, in the applicant's opinion, the proposed classification is in conformance with the Master Plan and the reasons for the opinion.

(d) A Concept Plan shall be submitted by the applicant at the time the application is filed. The Concept Plan shall illustrate the following:

(1) Location of site.

(2) Proposed nature and distribution of land uses, not including engineering drawings.

(3) Neighborhood (as defined by the Applicant).

ATTACHMENT A

1. Statement as to whether there is an allegation of mistake as to the existing zoning, and if so, the nature of the mistake and facts relied upon to support this allegation.

The Applicant believes that the County Council made a mistake in the legal sense in the present zoning of the subject property. The property is currently split-zoned B1 and AG. Approximately two acres of the property are B1. The remaining 8.5 acres are AG. The property is completely surrounded by rural residentially zoned and/or developed property. The split-zoning of parcels is generally frowned upon from a planning perspective. Furthermore, the size of the agricultural portion of the property and its relationship to surrounding rural residential development does not make it an appropriate property for agricultural uses or development. The property is shown on the current Master Land Use Plan as Rural Residential infill. This Land Use Plan designation was also shown for the property in the 1996 Master Land Use Plan. All of these factors were or should have been known by the County Council at the time of the 1997 Comprehensive Zoning.

- (4) All surrounding zoning.
- (5) Proposed public or private capital improvements.
- (e) Previous individual rezonings and recommendation since the effective date of the Comprehensive Rezoning, within the neighborhood of the petitioned area, their case numbers, dates, and decisions.
- (f) Environmental features map indicating woods, fields, streams, floodplains, non-tidal wetlands, etc.
- (g) Property deed and a boundary survey prepared and sealed by a registered surveyor, including dimension of area requested to be rezoned if only a portion of the property.
- (h) Private restrictions or covenants, if any, applicable to subject parcel.
- (i) Any agreements with individuals or associations in the neighborhood related to the proposed zoning shall be submitted.
- (j) Availability of public water and sewer.

Additional Information as Required by the Department of Planning and Zoning

- (a) Existing and proposed libraries, parks, schools, fire and police departments.
- (b) Demonstration of compatibility of the proposed use with existing and proposed development for the area.
- (c) Traffic impact study.
- (d) Economic and Environmental impact studies.
- (e) Estimated population for existing and proposed petitioned area and neighborhood, as defined.
- (f) Soils analysis.
- (g) Aerial photograph.

CASE 171 MAP 47 TYPE Rezoning

ELECTION DISTRICT 04 LOCATION Pleasantville Road near Route 152

BY Rt. 152, LLC, P.O. Box 7, Fallston 21047

Appealed because a rezoning pursuant to Section 267-12A of the Harford County Code to rezone 10.53 acres from a AG/B₂ District to a RR District requires approval by the Board.

I/We do solemnly declare and affirm under the penalties of perjury that the contents of the foregoing affidavit are true and correct to the best of my/our knowledge, information, and belief.

Rt 152, LLC
by

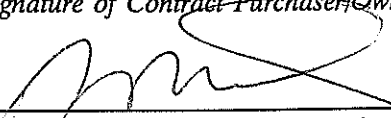

Signature of Applicant/Owner
Michael A. Euler

8-8-07
Date


Witness

8/8/07
Date

Signature of Contract Purchaser/Owner Date


Signature of Attorney/Representative
Kevin J. Mahoney, Esquire

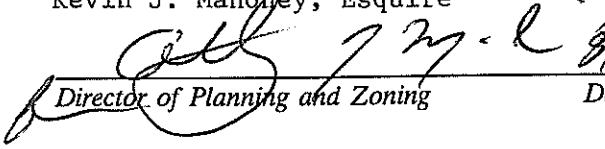
8/8/07
Date

Witness

Date


Witness

8/8/07
Date


Director of Planning and Zoning

8/22/07
Date

Zoning Staff

Date

DAVID R. CRAIG
HARFORD COUNTY EXECUTIVE

LORRAINE COSTELLO
DIRECTOR OF ADMINISTRATION



C. PETE GUTWALD
DIRECTOR OF PLANNING & ZONING

HARFORD COUNTY GOVERNMENT

Department of Planning and Zoning

November 15, 2007

STAFF REPORT

BOARD OF APPEALS CASE NO. 171

APPLICANT/OWNER: Rt. 152, LLC
P.O. Box 7
Fallston, MD 21047

REPRESENTATIVE: Kevin J. Mahoney, Esquire
Gessner, Snee, Mahoney and Lutche, PA,
11 South Main Street, PO Box 1776,
Bel Air, Maryland 21014

LOCATION: Northwest corner of MD Route 152 and
Pleasantville Road
Tax Map: 47 / Grid: 2D / Parcel: 252
Election District: Fourth (4)

ACREAGE: 10.53 acres

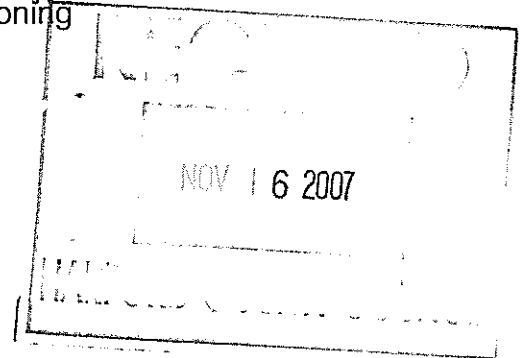
ACREAGE TO BE REZONED: 10.53 acres

EXISTING ZONING: AG/Agricultural District and B1/Neighborhood
Business District

PROPOSED ZONING: RR/Rural Residential District

DATE FILED: August 15, 2007

HEARING DATE: November 26, 2007



Preserving Harford's past; promoting Harford's future

MY DIRECT PHONE NUMBER IS (410) 638-3103

220 SOUTH MAIN STREET BEL AIR, MARYLAND 21014 410.638.3000 • 410.879.2000 • TTY 410.638.3086 • www.harfordcountymd.gov

THIS DOCUMENT IS AVAILABLE IN ALTERNATIVE FORMAT UPON REQUEST.

APPLICANT'S REQUEST and JUSTIFICATION:

See ATTACHMENT 1.

LAND USE and ZONING ANALYSIS:

Location and Description of Neighborhood:

The Applicant's property is located on the northwest corner of MD Route 152 (Fallston Road) and Pleasantville Road. A location map and a copy of the Applicant's site plan are enclosed with the report (Attachments 2 and 3).

The Applicant has submitted a map delineating their suggested neighborhood with the Application (Attachment 4). The neighborhood defined by the Applicant generally conforms to the neighborhood defined by the Department (Attachment 5).

Land Use – Master Plan:

The subject property is located outside of the Development Envelope on the northwest corner of MD Route 152 and Pleasantville Road. The predominant land use designation in this area of the County is Rural Residential. The Natural Features Map reflects Stream Systems. The subject property is designated as Rural Residential which is defined by the 2004 Master Plan as:

Rural Residential – Areas of focused rural development within the agricultural area, which allow low intensity residential opportunities while maintaining the character of the surrounding countryside. Water and sewer services are not planned for these areas. Residential density is limited to 1.0 dwelling units per 2 acres.

Enclosed with the report are copies of portions of the 2004 Land Use Map and the Natural Features Map (Attachments 6 and 7).

Land Use – Existing:

The existing land uses generally conform to the intent of the Master Plan. The area contains a mix of uses including agriculture, single-family dwellings, commercial uses and institutional uses. Commercial uses in the area include a gas station/convenience store, restaurants, a pharmacy, a veterinary clinic, a bank, a hardware store, a nursery and sawmill. The institutional uses in the area include churches, a fire station and schools such as Fallston High School and Youth's Benefit Elementary School.

The subject property is irregularly shaped, contains 10.53 acres and has approximately 700-feet of frontage along Pleasantville Road and 875-feet of frontage along MD Route 152. The subject property is currently unimproved. It appears that the subject property was previously improved

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with a single-family dwelling and accessory structures that were removed at some point after 1986. The Round Acres single-family residential subdivision abuts the subject property to the north and west. The Frank Thomas Sawmill is located across from the subject property on the east side of Pleasantville Road. A commercial building which includes a restaurant and dental office is located across from the subject property on the south side of Fallston Road. A convenience store with gas pumps is also located across from the subject property on the southwest corner of MD Route 152 and Pleasantville Road.

The topography within this area ranges from rolling to steep, especially near the stream valleys. The subject property is moderately sloping from the east to the west and is predominately wooded. There is a steep embankment along MD Route 152 with slopes of approximately 15%. A small stream also traverses the subject property along the MD Route 152 right-of-way. Enclosed with the report are a copy of the topography map, aerial photograph, and site photographs (Attachments 8, 9 and 10).

Zoning and Zoning History:

Zoning:

The zoning classifications in the area are generally consistent with the 2004 Master Plan as well as the existing land uses. The area contains a mix of AG/Agricultural District and RR/Rural Residential District zoning. Business zoning includes B1/Neighborhood Business District zoning which is oriented around the intersection of MD Route 152 and Pleasantville Road. The subject property is split zoned AG/Agricultural District and B1/Neighborhood Business District as shown on the enclosed copy of the Zoning Map (Attachment 11).

Zoning History:

1957 Comprehensive Zoning Review: In 1957 the subject property was split zoned AG/Agricultural District and B1/Neighborhood Business District (Attachment 12).

1982 Comprehensive Zoning Review: During the 1982 Comprehensive Zoning Review the subject property remained split zoned AG/Agricultural District and B1/Neighborhood Business District (Attachment 13).

1989 Comprehensive Zoning Review: The owners of the subject property in 1989 requested that the entire subject property be rezoned to B1/Neighborhood Business District. The County Council did not adopt the request and the subject property remained split zoned AG/Agricultural District and B1/Neighborhood Business District. Enclosed with the report are the Zoning Issue Log, Zoning Issue Map, and 1989 Zoning Map (Attachments 14, 15, and 16). It is important to note that the log incorrectly shows that the Council adopted RR/Rural Residential District and B1/Neighborhood Business District zoning for the subject property.

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1997 Comprehensive Zoning Review: During the 1997 Comprehensive Zoning Review the subject property remained split zoned AG/Agricultural District and B1/Neighborhood Business District (Attachment 17).

2005 Comprehensive Zoning Review: The Applicant requested that the entire subject property be rezoned to RR/Rural Residential District during the 2005 review. The County Council voted to change the property to RR/Rural Residential District. However, the County Executive vetoed the Legislation and the County Council did not override the veto. Therefore, the zoning assigned to the property in 1997 remains in effect. Attached are copies of the 2005 Zoning Issue Log and Zoning Issue Map (Attachment 18 and 19).

BASIS FOR INDIVIDUAL REZONING REQUEST:

Under Maryland case law, the burden of proof lies with the Applicant to provide information that there has been a substantial change in the overall character of the neighborhood or that the County made a mistake during the last comprehensive zoning review process. It should be noted that the courts have stated that any argument for change cannot be based on existing changes that were anticipated during the last comprehensive review.

Substantial Change Argument:

The Applicants are not claiming that a substantial change in the neighborhood has occurred. The Department would agree that a substantial change in the neighborhood has not occurred since 1997.

Mistake:

The Applicant states that, "The Applicant believes the County Council made a mistake in the legal sense in the present zoning of the subject property. The property is currently split-zoned B1 and AG. Approximately two acres of the property are B1. The remaining 8.5 acres are AG. The property is completely surrounded by rural residentially zoned and/or developed property. The split-zoning of parcels is generally frowned upon from a planning perspective. Furthermore, the size of the agricultural portion of the property and its relationship to surrounding rural residential development does not make it an appropriate property for agricultural uses or development. The property is shown on the current Master Land Use Plan as Rural Residential infill. This Land Use Plan designation was also shown for the property in the 1996 Master Land Use Plan. All of these factors were or should have been known by the County Council at the time of the 1997 Comprehensive Rezoning."

The Department agrees that a mistake has occurred in the zoning of the property. In 1957, the County oriented B1/Neighborhood Business District zoning around the intersection of MD Route 152 and Pleasantville Road. At that time, the County chose to split zone the subject property AG/Agricultural District and B1/Neighborhood Business District. Approximately 2.0 acres of

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the southeast corner of the subject property were zoned B1/Neighborhood Business District, while the remaining 8.53 acres were zoned AG/Agricultural District.

There is a small stream which bisects the B1/Neighborhood Business District portion of the subject property and then parallels the MD Route 152 right-of-way. Any proposal to develop the subject property would require that a 75-foot Natural Resource District (NRD) buffer be delineated from the edge of the stream or non-tidal wetlands. No development is permitted within the NRD. Attached to this report is a map showing the 75-foot NRD buffer delineated from the centerline of the stream (Attachment 20). Approximately 60% of the B1/Neighborhood Business District portion of the subject property cannot be developed due to the application of the 75-foot buffer. Additionally, there are steep slopes in the area of the business zoning that are approximately 15%. The remaining area of business zoning outside of the NRD buffer and steep slopes is not sufficient or suitable for commercial development.

The Department agrees that a mistake occurred during the 1997 Comprehensive Zoning. The Council did not know in 1997 that the subject property could not be developed commercially due to the environmental constraints posed by the steep slopes and stream. The requested RR/Rural Residential District zoning is in conformance with the intent of the 2004 Master Plan. The proposed zoning will permit residential development that is similar in nature to the adjacent Round Acres development that abuts the subject property to the north and west. Rezoning the entire property RR/Rural Residential District would eliminate the current split zoning of the property and provide the most appropriate zoning configuration.

ANALYSIS OF INDIVIDUAL ZONING REQUEST:

Conformance with the Master Plan and Land Use Element Plan:

The proposed rezoning is in conformance with the intent of the 2004 Master Plan. The Land Use Plan shows the area designated as Rural Residential.

Impact of Requested Zoning:

The requested rezoning would not adversely impact the neighborhood.

COMMENTS FROM ADVISORY GROUPS:

Historic Preservation Issues:

There are no historic sites on the property. No preservation easements impact the property.

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Planning Advisory Board:

The Planning Advisory Board (PAB) reviewed the request at their meeting on November 14, 2007. The PAB voted 4-0 to recommend that the requested change in zoning be approved (Attachment 21).

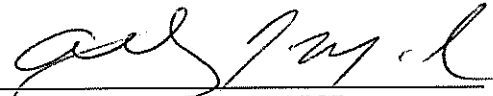
RECOMMENDATION and or SUGGESTED CONDITIONS:

The Department of Planning and Zoning recommends that the request to rezone the entire subject property RR/Rural Residential District from AG/Agricultural District and B1/Neighborhood Business District be approved.



Shane Grimm, AICP
Chief, Site Plan & Building
Permits Review

SPG/ASM/jf



Anthony S. McClune, AICP
Deputy Director, Planning and Zoning